

Honorable August B. Landis
United States Bankruptcy Judge



Entered on Docket
June 16, 2016

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

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In re:)	Case No. 15-14956-abl
MARC JOHN RANDAZZA,)	Chapter 11
Debtor.)	
_____)	
LIBERTY MEDIA HOLDINGS, LLC, et al.,)	Adv. Proc. No. 15-01193-abl
Plaintiffs,)	
vs.)	
MARC JOHN RANDAZZA,)	
Defendant.)	Hearing Date: June 10, 2016
_____)	Hearing Time: 10:00 a.m.

ORDER ON MOTION TO DISMISS

On June 10, 2016, the Court issued its oral ruling on a contested Motion to Dismiss, Or In the Alternative, For Partial Summary Judgment (“Motion”) (ECF No. 19).¹ The Motion was filed on behalf of defendant Marc John Randazza (“Defendant”). The Motion seeks dismissal of the complaint² filed in the adversary proceeding captioned above.

¹In this Order, unless otherwise specified all references to “ECF No.” are to the numbers assigned to the documents filed in the above-captioned adversary proceeding as they appear on the docket maintained by the Clerk of the Court.

²ECF No. 1; as amended, ECF No. 11 (collectively, the “Complaint”).

1 At the June 10, 2016, oral ruling, attorney Matthew C. Zirzow appeared on behalf of
2 Defendant. Attorney James D. Greene appeared telephonically on behalf of plaintiffs Liberty
3 Media Holdings, LLC and Excelsior Media Corp. (collectively, "Plaintiffs"). Attorney Timothy
4 R. Wheeler appeared telephonically on behalf of Bank of America, N.A.

5 To the extent that the Court made findings of fact and conclusions of law in the course
6 of its oral ruling on June 10, 2016, those findings of fact and conclusions of law are
7 incorporated into this Order by this reference pursuant to FED. R. CIV. P. 52(a)(1), made
8 applicable in this contested matter pursuant to FED. R. BANKR. P. 9014(a) and (c) and 7052.

9 For the reasons stated on the record:

10 **IT IS HEREBY ORDERED** that the Motion is **GRANTED in part and DENIED in**
11 **part as follows:**

- 12 • To the extent the Motion seeks dismissal of the non-enumerated request
13 for relief set forth in the prayer of the Complaint ("Prayer"),³ for relief in
14 the form of a jury trial, the Motion is **GRANTED**.
- 15 • To the extent the Motion seeks dismissal of the non-enumerated request
16 for relief set forth in the Prayer of the Complaint for disgorgement of
17 monies paid by Plaintiffs to Defendant, the Motion is **GRANTED to the**
18 **extent** Plaintiffs seek disgorgement as a separate remedy via only the
19 Prayer.
- 20 • To the extent the Motion seeks dismissal of the non-enumerated request
21 for relief set forth in the Prayer of the Complaint for attorney fees and
22 costs, the Motion is **GRANTED only to the extent** Plaintiffs seek
23 attorney fees and costs incurred in their pursuit of this instant adversary
24 proceeding.

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26 ³See ECF No. 11 at pp. 20-21 of 21.

- 1 • To the extent the Motion seeks dismissal of the non-enumerated request
2 for relief set forth in the Prayer of the Complaint for attorney fees and
3 costs incurred prior to commencement of Defendant's bankruptcy case⁴
4 as part of Plaintiffs' claims for nondischargeable monetary damages, the
5 Motion is **DENIED**, as the Court finds Plaintiffs' claims for
6 nondischargeable monetary damages appropriate under Wilshire
7 Boulevard.⁵
- 8 • To the extent the Motion seeks dismissal of Claim for Relief 1 from the
9 Complaint, the Motion is **GRANTED**.
- 10 • To the extent the Motion seeks dismissal of Claim for Relief 2 from the
11 Complaint, the Motion is **GRANTED**.
- 12 • To the extent the Motion seeks dismissal of Claim for Relief 3 from the
13 Complaint, the Motion is **GRANTED**.

14 **IT IS FURTHER ORDERED** that all other relief requested in the Motion is **DENIED**.

15 **IT IS FURTHER ORDERED** that, to the extent this Order dismisses the non-
16 enumerated requests for relief contained in the Prayer of the Complaint,⁶ such dismissal is **with**
17 **prejudice**, as the Court finds that amendment of those requests for relief would be futile.

18 **IT IS FURTHER ORDERED** that, to the extent this Order dismisses enumerated
19 Claims for Relief 1, 2, and 3 of the Complaint, such dismissal is **without prejudice**.

20 **IT IS FURTHER ORDERED** that Plaintiffs shall have **21 days from the date of**
21 **entry of this Order on the Court's docket** to file an amended complaint alleging sufficient
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23 ⁴Voluntary chapter 11 petition for relief filed in the United States Bankruptcy Court for
24 the District of Nevada on August 28, 2015, as Case No. 15-14956-abl (the "Main Case"). See
Main Case ECF No. 1.

25 ⁵The 3250 Wilshire Boulevard Bldg. v. W.R. Grace & Co., 990 F.2d 487 (9th Cir. 1993).

26 ⁶See 2:12-24 of this Order.

1 facts to make out prima facie dischargeability objections under 11 U.S.C. §§ 523(a)(2)(A),
2 (a)(4), and/or (a)(6).

3 **IT IS FURTHER ORDERED** that, in the event Plaintiffs fail to file an amended
4 complaint within the time set forth in this Order, judgment will be entered dismissing this
5 adversary proceeding on the merits without notice or further opportunity for hearing.

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8 Notice and copies sent to:

9 ALL PARTIES VIA BNC.

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